IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WA.No. 1267 of 2007

AGAINST THE JUDGEMENT IN WPC.21301/2005
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APPELLANT: 1ST AND 2ND RESPONDENTS:
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1. THE ALAPPUZHA MUNICIPALITY, REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE, ALAPPUZHA.

2. THE CHAIRPERSON, ALAPPUZHA MUNICIPALITY, ALAPPUZHA.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.C.S.MANILAL

RESPONDENTS:3RD RESPONDENT/ADDL.RESPONDENTS 4 TO 9/ PETITIONERS
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1. B.INRABALAN PILLAI, SECRETARY, ALAPPUZHA MUNICIPALITY, ALAPPUZHA.

2. VIJAYAKUMART.V.,KANDATHIL HOUSE, POONTHOPU WARD, ALAPPUZHA.

3. REMA.K.,PARAMBIL VEEDU, PUNNAPRA P.O., ALAPPUZHA.

4. AJITH S.,THATTARUPARAMBIL, THONDANKULANGARA WARD, ALAPPUZHA.

5. ASHAKUMARI.M.S., VELIYIL AARATTUVAZHY WARD, ALAPPUZHA.

6. MADHU V.P., KIZHAKKEVELI, AARATTUVAZHI WARD, ALAPPUZHA.

7. PRASAD T.S., THYVELIKKAKOM,
VATTAYAL WARD, ALAPPUZHA.

8. ANTONY, S/O.E.ANTHAPPAN,
SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD,
ALAPPUZHA.

9. VARGHESE, S/O.MATHAI VAREED, -DO-.

10. J.FRANCIS, S/O.JOSEPH, -DO-.

11. K.J.MARTIN, S/O.JANUVARIES, -DO-.

12. K.A.ANTONY, S/O.ANTHONI, -DO-.

13. JACOB THOMAS, S/O.THOMAS, -DO-.

14. BENEDICT, S/O.ANTHAPPAN, -DO-.

15. JAMES.P.D.,S/O.P.A.DEVASSY, -DO-.

16. DEVASSY, S/O.ISSAC, -DO-.

BY ADV. SMT.C.K.SHERIN
SRI.L.RAJESH NARAYANAN
SRI.B.GOPAKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 1267 of 2007

Dated: 19th June 2007

JUDGMENT

Radhakrishnan, J.

This appeal is preferred by the Municipality and its Chairperson aggrieved by the judgment of the learned single judge in W.P.C. No 21301 of 2005. Writ petition was preferred seeking a writ of certiorari to quash Exts. P14 and P25 and also for a direction to the respondents therein to regularise the service of the petitioners as per the provisions of Ext. P10 government order on the basis of the certificates issued in their favour as per Exts. P2 to P8 and other records. Learned single judge elaborately considered the rival contentions and after perusing Exts. P2 to P8 certificates stated as follows:

> "Exts. P2 to P8 are certificates issued by Shri D. Sudarsanan, Smt Sushama, P. Jyothis, Sheela Sabu, Shri Joshi

> Abraham, B. Ansari and Elgin Richard who had the opportunity to get elected as Municipal Councillors and to serve in that capacity the Alappuzha Municipality. Shri B. Ansari was the Vice Chairman of the Municipal Council for some time. They have issued the certificates based on their direct and personal knowledge. The respondents have no case that Exts. P2 to P8 certificates are not genuine. The respondents have not stated iin their counter affidavit that the facts stated in Exts. P2 to P8 are either incorrect or false. I find no valid reason to hold that Exts.P2 to P8 are not reliable documents. It is pertinent to bear in mind that sanitary workers engaged on daily wage basis belong to the lowest rung in service. Most of them are practically illiterates. Records showing the period of their service are in the custody of the respondent-Municipality."

When the matter came up for hearing we also directed the Municipality to file an affidvit stating the period of engagement of the writ petitioners, if any, and to produce the muster roll maintained by it during the relevant period. No document has been produced before us but an affidavit was filed by the Secretary of the Municipality averments of which are contrary to what was stated in the counter affidavit filed in the writ petition. The Municipality in the counter affidavit in the writ petition has stated as follows:

> "Therefore, the petitioners' contention that they are eligible for appointment cannot be sustained since there is no material to show that the petitioners have been working in the Municipality after the year 2000."

But what about their engagement prior to the year 2000? The

definite case of the petitioners is that they were being engaged by the Municipality on daily wages from 1988 onwards. We find there is a contradiction in the affidvit filed by the Municipality in the writ petition as well as in the affidavit filed before us. In the affidavit filed in the appeal it is stated that the petitioners were never engaged by the Municipality which is contrary to the averments contained in the counter affidvit filed in the writ petition. Under such circumstances, we are of the view, learned single judge is justified in placing reliance on Exts. P2 to P8 certificates. We make it clear that Ext. R1(a) letter of the Government cannot be taken as the sole criteria in deciding the claim of the petitioners. Municipality it is seen had not kept any records for engaging scavengers and other low paid employees on daily wages during the relevant period. In such circumstances, learned single judge is justified in placiing reliance on Exts. P2 to P8 certificates. In such circumstances, learned single judge, in our view, has rightly directed the Municipality to regularise the service of the petitioners which does not call for interference by us in this appeal. The appeal is dismissed.

2. Counsel appearing for the Municipality prayed for two

months' time for giving effect to the judgment of the learned single judge. Time prayed for is granted.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

19/06/2007
en

[true copy]